

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index No.:

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MICHELLE CASTELLUCCIO and THOMAS
CASTELLUCCIO,

Plaintiffs,

COMPLAINT AND
JURY DEMAND

-against-

IAN M. RUBINS, M.D.

Defendants.
-----X

**08 CIV. 0448
BRIANT**

Plaintiff, MICHELLE CASTELLUCCIO and THOMAS CASTELLUCCIO, through their attorneys, KUCZINSKI, VILA & ASSOCIATES, LLP, complaining of the Defendant, allege as follows:

INTRODUCTION

1. Plaintiffs file this action against the defendant, IAN M. RUBINS, M.D., alleging that she sustained serious, significant, permanent and disfiguring personal injuries as a result of the negligence and medical malpractice committed by the defendant during his course of treatment with the plaintiff and plaintiff is claiming entitlement to compensatory damages and other just relief as a result of the negligence and malpractice of the defendant.

JURISDICTION

2. This court has jurisdiction relative to plaintiffs' claim against defendant by virtue of 28 U.S.C. Section 1332 in that there exists complete diversity of citizenship between all parties, plaintiffs and defendant and the amount in controversy exceeds the sum of Seventy Five Thousand and 00/100 (\$75,000.00) Dollars exclusive of interests and costs.

VENUE

3 Venue is appropriate in The United States District Court for the Southern District of New York, in that the defendant has significant contacts with the district and the events that

give rise to this claim occurred in the district. Accordingly, venue properly lies pursuant to 28 U.S.C.A., U.S.C.A. Section 1391.

PARTIES

4. Plaintiffs, MICHELLE CASTELLUCCIO and THOMAS CASTELLUCCIO are citizens and are domiciled and are residents of the County of Westchester, New York State.

5. Defendant, IAN M. RUBINS, M.D., is a citizen and is domiciled and is a resident of the State of Connecticut.

6. That defendant, IAN M. RUBINS, M.D., is a doctor licensed to practice medicine in the State of Connecticut.

7. That Defendant, IAN M. RUBINS, M.D., held himself out to be a physician offering professional services to the general public and to plaintiff in particular.

8. That Defendant, IAN M. RUBINS, M.D., represented that he was competent to perform and render all the medical care, treatment, services and advice required by the plaintiff, MICHELLE CASTELLUCCIO.

9. The defendant, IAN M. RUBINS, M.D., was an attending physician of GREENWICH HOSPITAL, and as such was afforded and granted all such licences and privilege as an attending physician.

10 That defendant, IAN M. RUBINS, M.D., held himself out as a plastic surgeon, a breast specialist and a breast surgeon to the public in general and to the plaintiff in particular.

FACTUAL ALLEGATIONS

11. Plaintiffs specifically incorporate the above numbered paragraphs as if fully set forth herein.

12. The plaintiff, MICHELLE CASTELLUCCIO, came under the care and treatment of IAN M. RUBINS, M.D., in January 2007 and had a bilateral augmentation mastopexy performed by IAN M. RUBINS, M.D., at GREENWICH HOSPITAL on January 24, 2007.

13. Thereafter, the plaintiff was under the continued care and treatment of IAN M.

RUBINS, M.D., and developed complications, from the breast surgery. As a result of the complications, the plaintiff, MICHELLE CASTELLUCCIO, had a right breast capsulectomy, performed by IAN M. RUBINS, M.D., on March 14, 2007 at GREENWICH HOSPITAL.

14. Thereafter, the plaintiff continued to treat with IAN M. RUBINS, M.D., and developed further complications.

15. As a result of these additional complications plaintiff underwent a removal of the right breast implant on April 11, 2007 by IAN M. RUBINS, M.D., at GREENWICH HOSPITAL.

16. As a result of these complications, plaintiff will require additional treatment, care and further breast surgery.

17. That, Defendant, IAN M. RUBINS, M.D., has a history of substance abuse, drug problems and addiction and received a five (5) year probation for these problems from the Connecticut Department of Health on July 6, 2006 and was under such probation at the time of his treatment of the plaintiff, MICHELLE CASTELLUCCIO.

18. Defendant, IAN M. RUBINS, M.D., also had a prior history of substance abuse, drug problems and drug addictions which resulted in previous probations or suspensions.

19. Despite this long unprofessional history of substance abuse, drug problems and drug additions, Defendant, IAN M. RUBINS, M.D., continued to practice medicine and all licensing and privileges as an attending physician performing surgeries at the hospital as well as the surgeries performed on the plaintiff on January 24, 2007, March 14, 2007 and April 11, 2007.

20. Defendant, IAN M. RUBINS, M.D.'s substance abuse, drug problem and drug addictions ultimately resulted in his license suspension on June 19, 2007 and ultimate surrender of his license for stealing a syringe of the pain killer, Fentanyl from another patient in an adjoining operating room at GREENWICH HOSPITAL, and injecting himself with the drug and replacing the other patient's syringe with saline solution.

FIRST CLAIM FOR RELIEF

21. Plaintiffs, repeat and reallege each and every allegation of the proceeding paragraphs hereof with the same force and effects as if fully set forth herein.

22. The above referenced medical care, diagnosis, treatment, surgeries and services rendered to the plaintiff, MICHELLE CASTELLUCCIO, by the defendant, IAN M. RUBINS, M.D. was rendered carelessly, unskillfully, negligently and not in accordance with accepted standards of medical care, diagnosis, treatment, surgeries and services in the community.

23. The plaintiff's injuries and damages were caused solely by the negligence and malpractice of the defendant, without any negligence on the part of the plaintiff contributing thereto.

24. To the extent applicable, the plaintiff will rely on the doctrine of Res Ipsa Loquitor or any other similar applicable state doctrines.

25. By reason of the foregoing, the Plaintiff, MICHELLE CASTELLUCCIO, sustained great pain, agony, injury, suffering, disability, scarring, disfigurement, hospitalization as well as mental anguish and emotional distress and economic loss.

26. By reason of the above, the Plaintiff, MICHELLE CASTELLUCCIO, has sustained personal injuries and damages, both general and special and is entitled to compensatory damages and such other relief as a result of defendant's negligence and malpractice.

27. By reason of the foregoing, the plaintiff, MICHELLE CASTELLUCCIO, has sustained personal injuries and damages, both general and special and is entitled to compensatory damages and other just relief as a result of the defendants negligence and malpractice.

WHEREFORE, the Plaintiff, MICHELLE CASTELLUCCIO demands judgment against the Defendant, IAN M. RUBINS, M.D. in the amount of FIVE MILLION and 00/100 (\$5,000,000,00) DOLLARS, together with cost of suit, interest and for all other relief this court deems just, fair and equitable

SECOND CLAIM FOR RELIEF

28. Plaintiffs, repeat and reallege, each and every allegation set forth above with the same force and affect as if it was set forth herein and at length.

29. Defendant, his agents, servants and employees failed to inform plaintiff of the reasonably foreseeable risks and benefits of, and alternatives to treatment proposed and rendered which would have been disclosed by a reasonable medical practitioner under similar circumstance in consequence of which defendant failed to obtain an informed consent, thereto from the plaintiff.

30. A reasonably prudent person in plaintiff's position would not have undergone the treatment and diagnosis rendered by the defendant to the plaintiff if she had been fully informed.

31. The lack of informed consent alleged herein is a proximate cause of the injuries, conditions and disabilities for which recovery is sought.

32. Plaintiff's injuries and damages were caused solely by the negligence and malpractice of the defendant, without any negligence on the part of the plaintiff contributing thereto.

33. By reason of the foregoing, plaintiff, MICHELLE CASTELLUCCIO, has sustained great pain, agony, injury, suffering, disability, scarring, disfigurement, hospitalization as well as mental anguish and emotional distress and economic loss.

34. By reason of the foregoing, the Plaintiff, MICHELLE CASTELLUCCIO, has sustained personal injuries and damages, both general and special and is entitled to compensatory damages and other just relief as a result of defendant's negligence and malpractice.

WHEREFORE, the Plaintiff, MICHELLE CASTELLUCCIO demands judgment against the defendant, IAN M. RUBINS, M.D., in the amount of FIVE MILLION and 00/100 (\$5,000,000.00) DOLLARS, together with cost of suit, interests and for all other relief this court deems just fair and equitable.

THIRD CLAIM FOR RELIEF

35. Plaintiffs, repeats and realleges, each and every allegation set forth above with the same force and affect as if it was set forth herein and at length.

36. That at all times hereinafter mentioned, Plaintiff THOMAS CASTELLUCCIO was the spouse of the Plaintiff MICHELLE CASTELLUCCIO and as such was entitled to the society, services and consortium of his spouse, MICHELLE CASTELLUCCIO.

37. That by reason of the foregoing, Plaintiff THOMAS CASTELLUCCIO was deprived of the society, services and consortium of the Plaintiff MICHELLE CASTELLUCCIO and shall forever be deprived of said society, services and consortium.

WHEREFORE, the Plaintiff, THOMAS CASTELLUCCIO demands judgment against the defendant, IAN M. RUBINS, M.D., in the amount of FIVE HUNDRED THOUSAND and 00/100 (\$500,000.00) DOLLARS, together with cost of suit, interests and for all other relief this court deems just fair and equitable.

JURY DEMAND

38. Plaintiff requests a trial by jury of all issues of fact raised by the complaint pursuant to Rule 38(b) of the Federal Rules of Civil Procedure

PRAYER FOR RELIEF

WHEREFORE, the plaintiff demands judgment against each of the defendants as follows:

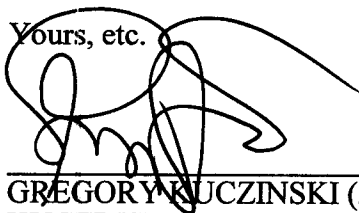
On the First Claim for Relief in the amount of FIVE MILLION and 00/100 (\$5,000,000.00) DOLLARS, against the defendant, plus the costs of the suit, interest and for such other relief as the court deems just and proper;

On the Second Claim for Relief in the amount of FIVE MILLION and 00/100 (\$5,000,000.00) DOLLARS, against the defendant, plus the costs of the suit, interest and for such other relief as the court deems just and proper.

On the Third Claim for Relief in the amount of FIVE HUNDRED THOUSAND and 00/100 (\$500,000.00) DOLLARS, against the defendant, plus the costs of the suit, interest and for such other relief as the court deems just and proper.

Dated: Tarrytown, New York
January 14, 2008

Yours, etc.



GREGORY KUCZINSKI (3191)
KUCZINSKI, VILA & ASSOCIATES, LLP
Attorneys for Plaintiff(s)
MICHELLE CASTELLUCCIO
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Our File No. P-4255/07

TO: IAN M. RUBINS, M.D.
4 Dearfield Drive, Ste. 106
Greenwich , CT 06837

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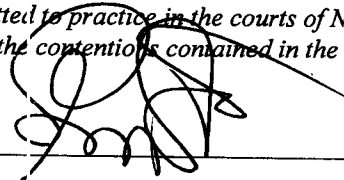
(914) 347-7333

Attorneys for Plaintiff

Pursuant to 22NYCRR 130-1-1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: January 14, 2008

Signature:



Print Signer's Name : GREGORY KUCZINSKI

Service of a copy of the within

is hereby admitted.

Dated:

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Attorney(s) for

PLEASE TAKE NOTICE

☐ *that the within is a (certified) true copy of a*
NOTICE OF *entered in the office of the clerk of the within named Court on*
ENTRY

☐ *that an Order of which the within is a true copy will be presented for settlement*
NOTICE OF *to the Hon. one of the judges of the within named Court,*
SETTLEMENT *at*
on , at M.

Dated:

KUCZINSKI, VILA, & ASSOCIATES LLP.

Attorneys for Plaintiff

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